



# STATE OF INDIANA

MITCHELL E. DANIELS, JR., Governor

PUBLIC ACCESS COUNSELOR  
ANDREW J. KOSSACK

Indiana Government Center South  
402 West Washington Street, Room W470  
Indianapolis, Indiana 46204-2745  
Telephone: (317)233-9435  
Fax: (317)233-3091  
1-800-228-6013  
[www.IN.gov/pac](http://www.IN.gov/pac)

June 3, 2011

Mr. Kent Hull  
*Indiana Legal Services*  
401 E. Colfax, Suite 116  
South Bend, IN 46617

*Re: Informal Inquiry 11-INF-14; City of South Bend Department of Law*

Dear Mr. Hull:

This is in response to your informal inquiry regarding City of South Bend Department of Law ("Department"). Pursuant to Ind. Code § 5-14-4-10(5), I issue the following opinion in response to your inquiry. My opinion is based on applicable provisions of the Indiana Public Access Records Act ("APRA"), I.C. § 5-14-3-1 *et seq.*

Your inquiry seeks advice regarding the Department's denial of your records request pertaining to "attorneys employed by the city or county." You question whether or not the Department's determinations as to the items of your records request are appropriate under the APRA.

In response to your inquiry, Thomas L. Bodnar, attorney for the City of South Bend, argues that the Department is not required to provide a list of employees. Mr. Bodnar, citing to several opinions issued from this office, believes it to be the position of this office that such requests for lists of employees is not required to be created by a public agency under the APRA. Mr. Bodnar notes that while some opinions reference the "list of names and addresses" exception under I.C. 5-14-3-3(f), most of the opinions rely on the general requirement that records request must identify with reasonably particularity the record being requested.

The APRA provides a discretionary exception to disclosure for most personnel file information. While certain personnel file information must be disclosed, the exception provides that the subdivision requiring such disclosure "does not apply to disclosure of personnel information generally on all employees or for groups of employees without the request being particularized by employee name." I.C. § 5-14-3-4(b)(8). In other words, the Department is not required to provide you with the requested information because you have requested the information generally without particularizing your request by employee name. In addition, Mr. Bodnar is correct that nothing in the APRA requires a public agency to *develop* records or create a list pursuant to any records

request. The APRA requires the public agency to *provide access* to records already created. *See Opinion of the Public Access Counselor 10-FC-56.* Despite the format of your request, Mr. Bodnar has indicated that the Department has provided you with some information relevant to your request: specifically, “a computerized list of entities who are paid out of the Legal or Professional Line in the Budget of each Department for the years in questions.”

In regards to your request for “retainer agreements,” Mr. Bodnar objects to the form of your request but has nonetheless indicated to you that the Department intends to search for the retainer agreements and has, in fact, already provided you with dozens of pages of records. Mr. Bodnar advised that such agreements will be examined first to determine if any material contain therein needs to be redacted. I anticipate that the Department will either provide you with the requested records or cite a legal basis under the APRA or some other statute for the redactions.

If I can be of additional assistance, please do not hesitate to contact me.

Best regards,

A handwritten signature in black ink that reads "Andrew J. Kossack". The signature is written in a cursive, slightly slanted style.

Andrew J. Kossack  
Public Access Counselor

cc: Thomas L. Bodnar